

In the Supreme Court of the State of Idaho

IN RE: EMERGENCY REDUCTION)
IN COURT SERVICES AND)
LIMITATION OF ACCESS TO)
COURT FACILITIES)

ORDER
OCTOBER 8, 2020

For public safety and to mitigate the spread of the novel coronavirus, and to expressly allow for in person bench trials and in person evidentiary hearings in juvenile cases, pursuant to Idaho Court Administrative Rule 48 all State of Idaho court proceedings shall be governed by the following rules until further order of the Court.

1. The minimum operating personnel for each court facility shall include at least one front desk deputy clerk and one courthouse security officer limiting access to court facilities. If any non-court staff appears in-person for a hearing, at least one additional court security officer in the courtroom is required.
2. No civil jury trials shall commence, nor shall a juror be required to appear in a civil case before December 1, 2020.
3. All trials on a petition to terminate parental rights and felony sentencing hearings in which the possible penalty includes a life sentence shall be held in person, subject to the safety protocols identified in paragraph 6 of this order.
4. All other court proceedings are presumptively to be held remotely, i.e. with all participants utilizing remote technologies including teleconferencing and video conferencing, and are subject to the following conditions and requirements:
 - a. Court rules which prohibit hearing any case or part thereof remotely are suspended during the effective term of this order.
 - b. Any party intending to offer documentary evidence during a hearing held remotely will provide the court and all parties a list of such exhibits and copies

thereof at least seventy-two (72) hours before such hearing unless the assigned judge modifies the time for good cause shown.

- c. For all court proceedings, an audio recording must be created in For The Record (FTR) software or in Zoom software. For all court proceedings in district court, the official record must be kept by a court reporter in addition to the audio recording. With the permission of the assigned judge, a court reporter may report proceedings remotely.
 - d. An assigned judge has the discretion to enter other orders or impose other requirements to promote the safety of participants, to promote efficiency, and to protect the integrity of the remote proceeding.
5. A presiding judge may, in the exercise of discretion and after making findings on the record, determine that a proceeding, including a bench trial or an evidentiary hearing in a juvenile case, must be held in person because of the court's needs or to prevent undue prejudice to a party. In such a case, the assigned judge may postpone the hearing of the matter or allow an in-person hearing to the extent necessary to enable the court to consider the matter.
6. If a bench trial or an evidentiary hearing in a juvenile case is held in person, the following safety protocols shall be followed:
- a. If sufficient space to allow for adherence to safety requirements for all participants is unavailable in the county courthouse, alternative locations with sufficient space may be utilized at the discretion of the Administrative District Judge for each district.
 - b. All persons physically present in the courtroom or designated facility must remain a minimum of six feet away from all other persons at all times in the absence of permission from the presiding judge.
 - c. At all times, all persons in the courtroom or designated facility must wear a mask approved by the presiding judge unless that judge has granted an exception. In lieu of a face mask, with the permission of the presiding judge, a witness while testifying or an interpreter while interpreting may wear a face shield or be behind

a transparent barrier so facial expressions and the mouth can be observed when speaking.

- d. Access to hand sanitizer and bleach wipes must be available in any room in which proceedings are taking place. Access to a sanitation station, where hands can be washed with soap and water, must be available within the building.
 - e. A verbatim record of all proceedings must be kept either by a certified court reporter or in the For the Record Software.
7. Any portion of a bench trial otherwise open to the public pursuant to law may be live streamed in lieu of allowing the physical presence of the public only when:
- a. The assigned judge finds that health and safety concerns override other interests in allowing the public to be physically present in the courtroom;
 - b. Denial of the public's physical presence in the courtroom is necessary to protect the health and safety of those participating in the proceeding, including, if applicable, a lack of sufficient physical space for adherence to required social distancing;
 - c. The assigned judge has considered other reasonable alternatives to allow for the physical presence of the public;
 - d. The assigned judge has found on the record that live streaming is an appropriate alternative because:
 - i. No reasonable in-person alternative is available that would sufficiently ensure the health and safety of those participating in the trial; and
 - ii. The available live streaming capability is a narrowly tailored and reasonable alternative.
 - e. There shall be no live streaming of the following:
 - i. audio of conferences which occur in a court facility between attorneys and their clients, between co-counsel of a client, or between counsel and the presiding judge held at the bench;
 - ii. images of notes upon the counsel table, nor of any exhibits before they are admitted into evidence;

- iii. audio or images of off-the-record, in-chambers sessions or judicial deliberations;
8. While in a courthouse, any person attending or participating in a court proceeding or doing court business must:
 - a. wear a mask covering their nose and mouth;
 - b. maintain an appropriate social distance of at least six (6) feet from all persons not living in their household;
 - c. comply with all court orders restricting the number of persons that may gather together.
 9. The Administrative District Judge is responsible for ensuring adequate measures are in place so that while in a courthouse all persons participating in a court proceeding or doing court business:
 - a. have easy access to sanitation stations where hand sanitizer, bleach wipes, or handwashing is available; and
 - b. can maintain appropriate social distance of at least six (6) feet from any persons not living in their household.
 10. The Administrative District Judge has the discretion to impose restrictions and limitations on the manner in which courthouses and courtrooms are used, including restrictions and limitations on in-person proceedings.
 11. Existing grand jury panels may be extended at the discretion of the court that summoned the grand jury.
 12. The 21-day preliminary hearing requirement for out-of-custody defendants under Idaho Criminal Rule 5.1 is waived during the effective dates of this Order.
 13. No judge shall be disqualified without cause from any proceeding pursuant to Idaho Criminal Rule 25(a), Idaho Rule of Civil Procedure 40(a), and Idaho Rule of Family Law Procedure 107 during the effective term of this order. When this order is lifted, these disqualification rules will only operate prospectively and may not be exercised retrospectively in any existing case.

14. Signage shall be posted at all public entry points advising individuals not to enter courtrooms or approach court services offices if they:

- a. have been asked to self-isolate by any doctor, hospital, or health agency;
- b. have been required to self-isolate because of travel outside the State of Idaho;
- c. have been diagnosed with, but have not yet recovered from, COVID-19; or
- d. are experiencing any signs or symptoms of illness including: fever, cough, shortness of breath or difficulty breathing, chills, repeated shaking with chills, muscle pain, headache, or new loss of taste or smell;
- e. are not wearing a mask covering their nose and mouth.

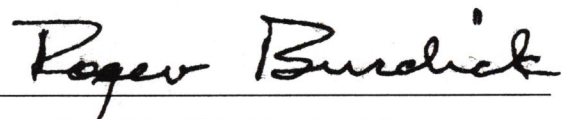
15. Individuals who, in violation of these protocols, approach a court services office or enter a courthouse or other venue where court is being held in violation of these protocols shall be denied access by anyone designated for courthouse security by the Administrative District Judge. Any violation of this order may be dealt with through contempt proceedings set forth in Idaho Rule of Civil Procedure 75. Any violation witnessed by a judge may be addressed through summary contempt proceedings set forth in Rule 75(b).

16. Individuals with legitimate court business who are prohibited from accessing court facilities for the reasons set forth in paragraph 14 are advised to stay home and call the local Court Clerk. Elected Court Clerks are urged to appoint one (or more as necessary) point persons to process requests for continuances, notify any presiding judge and involved attorneys, and facilitate the filing of necessary documents through e-filing or drop box processes.

This Order will take effect at 12:01 am on October 9, 2020 and, at that time, supersede this Court's order of April 22, 2020.


IT IS SO ORDERED.

DATED this 8th day of October, 2020.



Roger Burdick, Chief Justice, Idaho
Supreme Court

ATTEST:


Clerk